

Chapter 4: Pre-Board and Post-Board Action Review

Of Appeals from the
Franchise Tax Board (FTB)

Chapter 4: Applies to . . .

- Chapter 4 applies to appeals filed under:
 - The Franchise and Income Tax Laws; and
 - Senior Citizens Homeowners and Renters Property Tax Assistance Law.

Purpose

- Purpose of chapter 4's provisions:
 - Enhance initial review and development of appeals.
 - Clearly explain the deadlines for filing appeals and the Board's jurisdiction to hear appeals.
 - Add new pre-hearing conference procedures.

Overview of Review Process

- Appeal filed.
- Appellant given 90 days to perfect the appeal.
- Briefing starts when the appeal is perfected.
- A pre-hearing conference is conducted, if necessary or requested.
- A Hearing Summary or Summary Decision is prepared.

Authorized Jurisdiction

Article 1 lists:

- The 10 types of appeals the Board has jurisdiction to hear; and
- 5 commonly raised issues the Board does not have jurisdiction to hear.

No Jurisdiction

- Whether a statute or FTB regulation is valid under the U.S. or Cal. constitutions.
- Whether a provision of the Cal. Constitution is valid.
- Whether a liability has been or should be discharged in bankruptcy.
- Whether the FTB has violated non-tax laws.
- Whether an appellant is entitled to a remedy for the FTB's violation of its procedural or substantive rights alone.

Article 2 Requirements

- Article 2 requires appeals to:
 - Be in writing.
 - Identify the years and amounts at issue or the amount of assistance claimed.
 - Include a copy of the notice being appealed.
 - Be signed by each appellant.

Terminology & Filing Requirements

Chapter 4 refers to taxpayers as “appellants” and the FTB as “respondent.” Article 2 allows appellants to file their appeals electronically, by mail, or by personal delivery to the Board Proceedings Division.

Filing Deadlines

Article 2 provides the specific statutory deadlines for filing appeals. The deadlines generally require appellants to file their appeals within 30, 60, or 90 days after the FTB issues the notice being appealed, depending on the type of notice.

Automatic Filing Extensions

Article 2 provides extensions of:

- 5 days when notices are mailed to addresses inside California
- 10 days when notices are mailed to addresses outside California, but in the U.S.
- 20 days when notices are mailed to addresses outside the U.S.

Initial Review

- An appeal will be accepted if:
 - It is complete when filed or perfected within 90 days;
 - It is timely filed or raises a genuine material issue regarding timeliness; and
 - The Board has jurisdiction or there is a genuine material issue regarding jurisdiction.

Article 3 Briefing Schedules

Article 3 contains a general briefing schedule and a briefing schedule for innocent spouse appeals, explains that the Board Members and the Appeals Division may request additional briefing, and provides for the filing of non-party briefs.

General 90/30 Schedule

- Requires the respondent to file its opening brief within 90 days after a perfected appeal is acknowledged.
- Allows the appellant to file its reply brief within 30 days after the respondent's opening brief is acknowledged.

FTB's Request to Reply

A request must be filed within 15 days after an appellant's reply briefs is acknowledged, and, if the Chief Counsel grants a request, the FTB will have 30 days to file its reply brief and the appellant will be given 30 days to file a supplemental brief in response.

Innocent Spouse Appeals

- Article 3's innocent spouse briefing schedule:
 - Allows both spouses to be treated as appellants in one consolidated appeal.
 - Requires the Board to contact non-appealing spouses and invite them to participate in their spouses' appeals.

Related Federal Action

Article 3 requires the parties to innocent spouse appeals to notify the Board if the IRS grants a related innocent spouse appeal, and allows for additional briefing in such situations.

Additional Briefing and Evidence

Article 3 also allows the Appeals Division, Board Members, and the Board to request additional briefing and evidence, and provides for the filing of non-party briefs.

Oral Board Hearings

Article 4 grants every appellant the right to an oral Board hearing, if requested in writing no later than 30 days after the conclusion of the briefing schedule. The Chief of Board Proceedings may accept late requests for reasonable cause.

Innocent Spouse Appeals

Both appealing spouses and non-appealing spouses may request oral Board hearings and their hearings will be consolidated, unless doing so would be ***unsafe, disruptive, or unjust.***

Appeals Division Review

Article 4 requires the Appeals Division to review the briefing on file and request additional briefing or evidence, conduct a pre-hearing conference, or both, if necessary to further address inadequately developed issues.

Pre-Hearing Conferences

Article 4 allows the parties to request pre-hearing conferences and the Appeals Division and the Board to require pre-hearing conferences to further develop factual and legal issues for the Board's consideration.

Hearing Summaries

- Article 4 requires the Appeals Division to prepare Hearing Summaries for each appeal scheduled for an oral Board hearing.
- Hearing Summaries set forth the relevant law and facts and contain the Appeals Division's analysis and comments.

Decision on Written Record

- Article 4 explains that appeals will be submitted for decision based upon the written record, if the appellant does not:
 - Request an oral Board hearing; or
 - Respond to its notice of hearing.
- These types of appeals are often referred to as “written-only” appeals.

Decisions & Opinions

Article 5 identifies the types of decisions and opinions the Board issues and explains that the Appeals Division issues letter decisions when the Board decides an appeal without adopting a Summary Decision or Formal Opinion.

Frivolous Appeal Penalty

Article 5 provides additional notice of the frivolous appeal penalty and the factors the Board considers when deciding whether to impose the penalty.

Finality

Article 6 explains that the Board's decisions become final 30 days after they are issued, unless a party files a petition for rehearing.

Petitions for Rehearing

- Article 6 requires petitions to contain sufficient facts and legal authorities to establish one of the following grounds for a rehearing:
 - Irregularity in the original proceedings.
 - Accident or surprise that prevented a fair hearing.
 - Newly discovered relevant evidence.
 - The decision is contrary to law.

Time to Perfect

Article 6 grants petitioners 30 days to perfect incomplete petitions and allows the other parties to file reply briefs opposing petitions.

Rehearing Decision

The Appeals Division is required to prepare a written Decision on Petition for Rehearing and submit it to the Board for consideration as a non-appearance matter.

Rehearings

Article 6 provides notice that the Board may limit the scope of a rehearing and explains that rehearings will be conducted like oral Board hearings.

Highlights

- Detailed jurisdictional provisions.
- Filing deadlines and filing requirements now codified in one location.
- Additional provisions for reviewing and developing appeals (requests for additional briefing and evidence, pre-hearing conferences, etc).

Wrap Up

- Goals are to:
 - Create uniform procedures.
 - Increase transparency.
 - Clarify expectations.
 - Improve customer relations.
- Next Up: Chapter 5 – General Board Hearing Procedures.

References

- California Code of Regulations, title 18, section 5000 et seq.
- BOE Rules for Tax Appeals and history:
<http://www.boe.ca.gov/regs/timelineCAtax.htm>.